

HOUSE BILL No. 1362

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-11; IC 22-12-6-8.

Synopsis: Ban on sale or possession of exploding fireworks. Prohibits the possession or sale of exploding fireworks, novelties, or trick noisemakers. Repeals an obsolete provision.

Effective: July 1, 2005.

Brown C, Ruppel

January 13, 2005, read first time and referred to Committee on Public Policy and Veterans Affairs.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1362

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-11-14-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this
3 chapter and IC 22-11-14.5:

4 "Auto burglar alarm" means a tube that contains pyrotechnic
5 composition that produces a loud whistle or smoke when ignited. A
6 small quantity of explosive, not exceeding fifty (50) milligrams, may
7 also be used to produce a small report. A squib is used to ignite the
8 device.

9 "Booby trap" means a small tube with string protruding from both
10 ends, similar to a party popper in design. The ends of the string are
11 pulled to ignite the friction sensitive composition, producing a small
12 report.

13 "Chaser" means a device, containing fifty (50) milligrams or less of
14 explosive composition, that consists of a small paper or cardboard tube
15 that travels along the ground upon ignition. A whistling effect is often
16 produced, and a small noise may be produced.

17 "Cigarette load" means a small wooden peg that has been coated



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with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced.

"Common firework" means a small firework that is designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing fifty (50) milligrams or less of explosive composition, and aerial devices containing one hundred thirty (130) milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect. Common fireworks:

(1) include:

(A) ground and hand-held sparkling devices, which include dipped stick, certain wire sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;

(B) aerial devices, which include sky rockets, missile-type rockets, helicopter or aerial spinners, roman candles, mines, and shells;

(C) ground audible devices, which include firecrackers, salutes, and chasers; and

(D) firework devices containing combinations of two (2) or more of the effects described in the preceding three (3) clauses **(A) through (C); and**

(2) do not include the following novelties and trick noisemakers:

(A) Snakes or glow worms.

(B) Smoke devices.

(C) Wire sparklers which contain no magnesium and which contain less than one hundred (100) grams of composition per item.

(D) Trick noisemakers, which include party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms.

"Cone fountain" means a cardboard or heavy paper cone which contains up to fifty (50) grams of pyrotechnic composition, and which produces the same effect as a cylindrical fountain.

"Cylindrical fountain" means a cylindrical tube not exceeding three-quarters (3/4) inch in inside diameter and containing up to seventy-five (75) grams of pyrotechnic composition. Fountains produce

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a shower of color and sparks upon ignition, and sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain), a wooden or plastic base to be placed on the ground (base fountain), or a wooden handle or cardboard handle for items designed to be hand-held (handle fountain).

"Dipped stick" or "wire sparkler" means a common firework that consists of a stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition does not exceed one hundred (100) grams per item. Those devices containing chlorate or perchlorate salts do not exceed five (5) grams in total composition per item. Wire sparklers that contain no magnesium and that contain less than one hundred (100) grams of composition per item are not included in the category of common fireworks.

"Distributor" means a person who sells fireworks to wholesalers and retailers for resale.

"Explosive composition" means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.

"Firecracker" or "salute" is a device that consists of a small paper-wrapped or cardboard tube containing not more than fifty (50) milligrams of pyrotechnic composition and that produces, upon ignition, noise, accompanied by a flash of light.

"Firework" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of common fireworks and special fireworks. The following items are excluded from the definition of fireworks:

- (1) Model rockets.
- (2) Toy pistol caps.
- (3) Emergency signal flares.
- (4) Matches.
- (5) Fixed ammunition for firearms.
- (6) Ammunition components intended for use in firearms, muzzle loading cannons, or small arms.
- (7) Shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms.
- (8) Indoor pyrotechnics special effects material.

"Flitter sparkler" means a narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. These devices do not use a fuse for ignition, but rather are ignited by igniting the paper at one (1) end of the tube.

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"Ground spinner" means a small spinning device that is similar to wheels in design and effect when placed on the ground and ignited, and that produces a shower of sparks and color when spinning.

"Helicopter" or "aerial spinner" is a spinning device:

(1) that consists of a tube up to one-half (1/2) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition;

(2) to which some type of propeller or blade device is attached; and

(3) that lifts into the air upon ignition, producing a visible or audible effect at the height of flight.

"Illuminating torch" means a cylindrical tube that:

(1) contains up to one hundred (100) grams of pyrotechnic composition;

(2) produces, upon ignition, a colored fire; and

(3) is either a spike, base, or handle-type device.

"Importer" means:

(1) a person who imports fireworks from a foreign country; or

(2) a person who brings or causes fireworks to be brought within this state for subsequent sale.

"Indoor pyrotechnics special effects material" means a chemical material that is clearly labeled by the manufacturer as suitable for indoor use (as provided in National Fire Protection Association Standard 1126 (2001 edition)).

"Interstate wholesaler" means a person who is engaged in interstate commerce selling fireworks not approved for sale in Indiana.

"Manufacturer" means a person engaged in the manufacture of fireworks.

"Mine" or "shell" means a device that:

(1) consists of a heavy cardboard or paper tube up to two and one-half (2 1/2) inches in inside diameter, to which a wooden or plastic base is attached;

(2) contains up to forty (40) grams of pyrotechnic composition; and

(3) propels, upon ignition, stars (pellets of pressed pyrotechnic composition that burn with bright color), whistles, parachutes, or combinations thereof, with the tube remaining on the ground.

"Missile-type rocket" means a device that is similar to a sky rocket in size, composition, and effect, and that uses fins rather than a stick for guidance and stability.

"Party popper" means a small plastic or paper item containing not more than sixteen (16) milligrams of explosive composition that is

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friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.

"Person" means an individual, an association, an organization, a limited liability company, or a corporation.

"Pyrotechnic composition" means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. Pyrotechnic compositions will not explode upon ignition unless severely confined.

~~"Retail sales stand" means a temporary business site or location where goods are to be sold.~~

"Retailer" means a person who purchases fireworks for resale to consumers.

"Roman candle" means a device that consists of a heavy paper or cardboard tube not exceeding three-eighths (3/8) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition. Upon ignition, up to ten (10) stars (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several-second intervals.

"Sky rocket" means a device that:

- (1) consists of a tube that does not exceed one-half (1/2) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition;
- (2) contains a wooden stick for guidance and stability; and
- (3) rises into the air upon ignition, producing a burst of color or noise at the height of flight.

"Smoke device" means a tube or sphere containing pyrotechnic composition that produces white or colored smoke upon ignition as the primary effect.

"Snake" or "glow worm" means a pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices do not contain mercuric thiocyanate.

~~"Snapper" means a small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.~~

"Special fireworks" means fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including firecrackers containing more than one hundred thirty (130) milligrams of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other exhibition display items that exceed the limits for classification as common fireworks.

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"Trick match" means a kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.

"Trick noisemaker" means an item that produces a small report intended to surprise the user.

"Wheel" means a pyrotechnic device that:

- (1) is attached to a post or tree by means of a nail or string;
- (2) contains up to six (6) driver units (tubes not exceeding one-half (1/2) inch in inside diameter) containing up to sixty (60) grams of composition per driver unit; and
- (3) revolves, upon ignition, producing a shower of color and sparks and sometimes a whistling effect.

"Wholesaler" means a person who purchases fireworks for resale to retailers.

SECTION 2. IC 22-11-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Nothing in this chapter shall be construed to prohibit:

(1) any resident wholesaler, manufacturer, importer, or distributor from selling:

- (A) at wholesale fireworks not prohibited by this chapter; or
- (B) fireworks not approved for sale **or possession** in Indiana if they are to be shipped directly out of state within five (5) days of the date of sale;

(2) the use of fireworks by railroads or other transportation agencies for signal purposes or illumination;

(3) the sale or use of blank cartridges for:

- (A) a show or theater;
- (B) signal or ceremonial purposes in athletics or sports; or
- (C) use by military organizations;

(4) the intrastate sale of fireworks not approved for sale in Indiana between interstate wholesalers;

(5) the possession, sale, or disposal of fireworks, incidental to the public display of Class B fireworks, by wholesalers or other persons who possess a permit to possess, store, and sell Class B explosives from the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury; or

(6) the use of indoor pyrotechnics special effects material before an indoor or outdoor proximate audience.

(b) For the purposes of this section, a resident wholesaler, importer, or distributor, is a person who:

- (1) is a resident of Indiana;
- (2) possesses for resale common fireworks approved or not

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approved for sale in Indiana;

(3) is engaged in the interstate sale of common fireworks described in subdivision (2) as an essential part of a business that is located in a permanent structure and is open at least six (6) months each year;

(4) sells common fireworks described in subdivision (2) only to purchasers who provide a written and signed assurance that the fireworks are to be shipped out of Indiana within five (5) days of the date of sale; and

(5) has possession of a certificate of compliance issued by the state fire marshal under section 5 of this chapter.

(c) A purchaser may not provide a written and signed assurance that the fireworks purchased are to be shipped out of Indiana and then sell or use them in Indiana.

SECTION 3. IC 22-11-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The state fire marshal shall remove at the expense of the owner, all stocks of fireworks or combustibles possessed, transported, or delivered in violation of this chapter.

(b) The state fire marshal shall stop the shipments and sale of fireworks, novelties, and trick noisemakers unless, prior to shipment into this state for sale, the manufacturer, wholesaler, importer, or distributor of the fireworks, novelties, and trick noisemakers submits to the state fire marshal:

(1) a complete description of each item proposed to be shipped into Indiana;

(2) a written certification that the items are manufactured in accordance with section 1 of this chapter; and

(3) an annual registration fee of one thousand dollars (\$1,000).

If upon inspection the state fire marshal finds that this chapter has been complied with, an annual certificate of compliance shall be issued to the manufacturer, wholesaler, importer, or distributor. An annual certificate of compliance expires December 31 of the year during which the certificate is issued. Each manufacturer, wholesaler, importer, or distributor must obtain a certificate of compliance. The certificate is not transferable, except that a ~~retailer~~ **person who** offers the items **described in section 8 of this chapter** for sale to the public is entitled to receive a certified copy of the certificate from the manufacturer, wholesaler, importer, or distributor from which the ~~retailer~~ **person** purchases the items. A certified copy of the certificate of compliance must be posted in each location where the items **described in section 8 of this chapter** are offered for sale to the

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public. If upon inspection the state fire marshal finds that this chapter has not been complied with, the state fire marshal shall refuse to issue a certificate of compliance and state the reasons for the refusal. A copy of the order denying the issuance of a certificate of compliance and the reasons shall be forwarded to the manufacturer, wholesaler, importer, or distributor. The state fire marshal may revoke any certificate of compliance issued to any manufacturer, wholesaler, importer, or distributor if the holder of the certificate has violated this chapter.

(c) All fireworks, novelties, and trick noisemakers shipped into Indiana, or manufactured and sold in Indiana, must have distinctly and durably painted, stamped, printed or marked on the package, box or container in which the items are enclosed the exact number of pieces in the container.

(d) It is unlawful for a manufacturer, wholesaler, importer, or distributor to sell at wholesale, offer to sell at wholesale, or ship or cause to be shipped into Indiana fireworks, novelties, or trick noisemakers unless the manufacturer, wholesaler, importer, or distributor has been issued and holds a valid certificate of compliance issued under subsection (b). This subsection applies to nonresidents and residents of Indiana.

SECTION 4. IC 22-11-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. A person who violates section 4(c), 5(c), 5(d), ~~7~~, or 8 of this chapter commits a Class A misdemeanor.

SECTION 5. IC 22-11-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. A person shall not **possess**, sell, ~~at retail~~ or offer for sale ~~at retail~~ any fireworks, novelties, or trick noisemakers other than the following:

- (1) Dipped sticks or wire sparklers. However, total pyrotechnic composition may not exceed one hundred (100) grams per item. Devices containing chlorate or perchlorate salts may not exceed five (5) grams in total composition per item.
- (2) Cylindrical fountains.
- (3) Cone fountains.
- (4) Illuminating torches.
- (5) Wheels.
- (6) Ground spinners.
- (7) Flitter sparklers.
- (8) Snakes or glow worms.
- (9) Smoke devices.
- ~~(10) Trick noisemakers, which include:~~
- ~~(A) Party poppers.~~

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- ~~(B) Booby traps.~~
- ~~(C) Snappers.~~
- ~~(D) Trick matches.~~
- ~~(E) Cigarette loads.~~
- ~~(F) Auto burglar alarms.~~

(10) Helicopters or aerial spinners.

(11) Mines or shells.

(12) Missile-type rockets.

(13) Roman candles.

(14) Sky rockets.

SECTION 6. IC 22-11-14-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) Each interstate wholesaler shall keep a record of each sale of fireworks not approved for sale in Indiana. This record must include:

- (1) the purchaser's name;
- (2) the purchaser's address; and
- (3) the date of the sale.

These records shall be kept for three (3) years and be available for inspection by the fire marshal.

(b) Each resident wholesaler shall post in a prominent location in the wholesaler's place of business a sign that reads as follows:

"Under Indiana law, a resident wholesaler of fireworks may sell fireworks not approved for sale **or possession** in Indiana only to other resident wholesalers and to purchasers who provide a written and signed assurance that the fireworks are to be shipped out of Indiana within five (5) days of the date of sale. A purchaser who provides a written and signed assurance that fireworks purchased are to be shipped out of Indiana within five (5) days of the date of sale and who then sells the fireworks in Indiana or ~~uses~~ **possesses** them in Indiana **after the expiration of the five (5) day period** commits a Class A misdemeanor, which is punishable by imprisonment for up to one (1) year and a fine of up to five thousand dollars (\$5,000).".

The state fire marshal shall provide interstate wholesalers with signs for the purposes of this subsection.

SECTION 7. IC 22-11-14.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter:

(1) "Auto burglar alarm" means a tube that contains pyrotechnic composition that produces a loud whistle or smoke when ignited. A small quantity of explosive, not exceeding fifty (50) milligrams, may also be used to produce

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a small report. A squib is used to ignite the device.

(2) "Booby trap" means a small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.

(3) "Cigarette load" means a small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one (1) of the pegs, a small report is produced.

(4) "Indoor pyrotechnics" means controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, dispersion of aerosols, emission of visible electromagnetic radiation, or a combination of these effects to provide the maximum effect from the least volume (as provided in National Fire Protection Association Standard 1126 (2001 edition)). The term does not include the following novelties and trick noisemakers:

(1) (A) Snakes or glow worms.

(2) (B) Smoke devices.

(3) (C) Wire sparklers that do not contain magnesium and that contain less than one hundred (100) grams of composition per item.

(4) (D) Trick noisemakers, which include party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms.

(5) "Snapper" means a small, paper wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.

(6) "Trick match" means a kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of a trick match, a small report or a shower of sparks is produced.

(7) "Trick noisemaker" means an item that produces a small report intended to surprise the user.

SECTION 8. IC 22-12-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) The application fee for a fireworks manufacturer, distributor, wholesaler, or importer permit issued under IC 22-11-14-5 shall be set by rules adopted by the commission under IC 4-22-2.

(b) The application fee for a fireworks retail stand permit issued under IC 22-11-14-7 shall be set by rules adopted by the commission

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1 under IC 4-22-2. The rules must exempt a nonprofit corporation
2 incorporated under IC 23-7-1.1 (before its repeal on August 1, 1991)
3 or IC 23-17 from the fee.

4 (c) (b) The fees set for applications under this section must be
5 sufficient to pay all the direct and indirect costs of processing an
6 application for which the fee is set. In setting the fees, the commission
7 may consider differences in the degree or complexity of the activity
8 being performed for each fee.

9 SECTION 9. IC 22-11-14-7 IS REPEALED [EFFECTIVE JULY 1,
10 2005].

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